Editor's note: appealed -- administratively terminated, Civ.No. 82-508 PCW (E.D.Cal. Mar. 24, 1987)

RONALD M. GUNTERT
MARION G. GUNTERT

IBLA 81-432 Decided November 27, 1981

Appeal from decision of the California State Office, Bureau of Land Management, declaring 26 placer mining claims abandoned and void. CA MC 54756 -- CA MC 54781.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

   The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2, in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

2. Notice: Generally -- Regulations: Generally -- Statutes

   All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

3. Estoppel: Generally

   Reliance upon erroneous advice or incomplete information provided by BLM employees cannot relieve the owners of mining claims of an obligation imposed on them by statute or relieve them of the consequences imposed by statute for failure to

comply with its requirements. Estoppel is an extraordinary remedy, especially as it relates to public lands and is to be applied with the greatest care and circumspection.

APPEARANCES: James L. Meeder, Esq., San Francisco, California, for appellants.

OPINION BY CHIEF ADMINISTRATIVE JUDGE PARRETTE

Ronald M. Guntert and Marion G. Guntert (the Gunterts) appeal from a decision of the California State Office, Bureau of Land Management (BLM), declaring 26 mining claims (CA MC 54756 -- CA MC 54781) 1/ abandoned and void for failure to file evidence of annual assessment work for the claims on or before December 30, 1980.

The Gunterts and Harvey E. Mullen 2/ located the claims at various times prior to October 21, 1976. On October 22, 1979, the Gunterts filed copies of material relating to the notices of location of these claims with BLM 3/ along with proof of labor for them for the 1979 assessment year. On August 31, 1980, the Gunterts apparently filed a consolidated proof of labor for all of the claims in the Placer County, California, recorder's office. However, no copy of this proof was filed with BLM on or before December 30, 1980, or at any time subsequently. Therefore, on March 10, 1981, BLM issued a decision declaring the claims abandoned and void pursuant to 43 CFR 3833.4, in that evidence of annual assessment work for the 1980 assessment year was not received on or before December 30, 1980, as required by 43 CFR 3833.2-1.

1/ The claims in question are as follows: American Bran Claim Nos. 1-9 (CA MC 54756 -- CA MC 54764); New York (CA MC 54765); Ohio (CA MC 54766); Arizona (CA MC 54767); Colorado (CA MC 54768); Colorado Extension (CA MC 54769); Home Ticket Extension Nos. 1-4 (CA MC 54770 -- CA MC 54773); Owl (CA MC 54774); New Moon (CA MC 54775); Perseverence (CA MC 54776); Pretty Joe (CA MC 54777); Pretty Joe Extension No. 1 (CA MC 54778); Swift Water Bill (CA MC 54779); Get There (CA MC 54780); and Ronald M. Guntert (CA MC 54781) placer mining claims.

2/ The Gunterts state in their notice of appeal that "Harvey E. Mullen has no interest in these claims, now or prior."

3/ In its decision BLM stated that "[a]dditionally, not all location notices have been filed." It appears that appellants filed with BLM copies of the serial register pages of the Placer County recorder's book instead of copies of the original notices of location for the claims. It is unnecessary to consider whether these filings sufficed, in view of our holding in this case.

The Gunterts appealed.

[1] An owner of mining claims located prior to October 21, 1976, who files copies of notices of location and evidence of annual assessment work with BLM on or before October 22, 1979, must file evidence of annual assessment work with BLM on or before December 30, 1980, in accordance with 43 CFR 3833.2-1. Eugene M. Goatcher, 58 IBLA 337 (1981). Appellants did not do so, therefore, BLM properly declared their claims abandoned and void. This Board has no authority to waive failure to comply with this statutory requirement. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

Although appellants filed a proof of labor for the 1980 assessment year with the Placer County, California, recorder's office in August 1980, this fact does not help them. Accomplishment of a proper state or county recording does not relieve appellants from filing with BLM under requirements of FLPMA or the implementing regulations. These are two separate filing requirements, and compliance with one does not constitute compliance with the other. Eugene M. Goatcher, supra.

[2] Appellants allege that they were unaware of the requirement of filing evidence of annual assessment work with BLM. However, all persons dealing with the Government are presumed to have knowledge of duly promulgated regulations. Donald Jardine, 58 IBLA 49 (1981).

[3] Appellants further allege that when they became aware that some required filings were necessary to preserve their mining claims, they requested and received from BLM information on the subject, but that the information they received from BLM was deficient. Appellants contend that this information did not inform them that the law required them to file evidence of assessment work annually with BLM or that failure to do so would void their mining claims. For this reason appellants seek to invoke estoppel against BLM.

The applicability of estoppel has been examined by this Board on prior occasions and our holdings are equally applicable to the facts in this case. It is well established that the authority of the United States to enforce a public right or to protect a public interest is not vitiated or lost by acquiescence of its officers or by their negligence in the performance of their duty. 43 CFR 1810.3; Donald M. Jardine, supra. Estoppel is an extraordinary remedy especially as it relates to public lands and it is to be applied with the greatest care and circumspection. Royal Harris, 45 IBLA 87 (1980). Specifically, reliance upon erroneous advice or incomplete information provided by BLM employees cannot relieve the owners of mining claims of an obligation imposed on them by statute. Lyman Mining Co., 54 IBLA 165 (1981); John Plutt, Jr., 53 IBLA 313 (1981); Lynn Keith, supra. As the concurring opinion in Plutt, supra at 318, stated:

> An essential element of estoppel is the requirement that the party asserting the estoppel must be ignorant of the true facts. See generally United States v. Georgia Pacific, 421 F.2d 92 (9th Cir. 1970). I do not doubt for a moment that appellant was actually ignorant of the requirement that he file his proof of assessment work or notice of intention to hold on or prior to October 22, 1979. Subjective ignorance, however, is insufficient, by itself, to establish this element of the estoppel test. What appellant must show is not only that he was ignorant, but also that he had a right to be ignorant. See United States v. Georgia Pacific, supra at 98.

The same response must be made to appellants' contention that 43 CFR 3833.2-1(a) is so unintelligible that it denies due process. See, for example, Northwest Citizens for Wilderness Mining Co., Inc., 33 IBLA 317 (1978), aff'd, Northwest Citizens for Wilderness Mining Co., Inc. v. BLM, No. 78-46-M (D. Mont. June 19, 1979). The applicable regulations merely mirror the statute and, to the extent that they have been considered by the courts, they have been upheld. See Western Mining Council v. Watt, 643 F.2d 618, 628 (9th Cir. 1981), cert. denied, 50 U.S.L.W. 3369 (Nov. 10, 1981). This Board has no authority to declare a duly promulgated Departmental regulation invalid where the regulation is consistent with the underlying statutory authority. Edgar W. Cook, 58 IBLA 358 (1981); Colorado-Ute Electric Association, Inc., 46 IBLA 35, 47 (1980); see Arizona Public Service Co., 20 IBLA 120, 123 (1975); Duncan Miller, 12 IBLA 206 (1973); cf. Feldslite Corporation of America, 56 IBLA 78, 88 I.D. 643 (1981) (regulation which compels a result not authorized by statute will not be followed to extent inconsistent); Garland Coal & Mining Co., 52 IBLA 60, 88 I.D. 24 (1981) (regulation which has no statutory basis will be afforded no force and effect).

Appellants contend that they never abandoned their mining claims, having expended in excess of $ 10,000 in labor and improvement on these claims in 1980 alone and in excess of $ 500,000 in labor and improvements on the claims over the past 10 years. In FLPMA, Congress specifically placed the burden on the claimant to show the claim has not been abandoned by complying with the requirements of the Act, and it decreed that any failure of compliance results in a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon may not be considered. Edgar W. Cook, supra.

Finally, appellants also request an evidentiary hearing pursuant to 43 CFR 4.415. Under that regulation a hearing may be allowed by the Board within its discretion on issues of facts, but in order to warrant such a hearing, an appellant must allege facts which, if proved, would entitle him to the relief sought. Stewart Capital Corp., 53 IBLA 369 (1981). Under the circumstances of this case, due process requirements are satisfied by this appeal. Rupert Thorne, 58 IBLA 319 (1981).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bernard V. Parrette
Chief Administrative Judge

We concur:

James L. Burski
Administrative Judge

Bruce R. Harris
Administrative Judge